

IN THE
Supreme Court of the United States

October Term, 1965

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No. 210

JAMES T. STEVENS,

Petitioner,

against

CHARLES A. MARKS, Justice of the Supreme Court of
the State of New York, County of New York,

Respondent.

**On Writ of Certiorari to the New York Supreme Court,
Appellate Division, First Department**

No. 290

JAMES T. STEVENS,

Petitioner,

against

JOHN J. McCLOSKEY, Sheriff of New York City,

Respondent.

**On Writ of Certiorari to the United States Court of
Appeals for the Second Circuit**

**OPPOSITION TO LATE FILING OF BRIEF AMICUS
CURIAE ON BEHALF OF SUPERIOR OFFICERS
COUNCIL OF THE CITY OF NEW YORK
POLICE DEPARTMENT**

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On December 22, 1965, the respondent consented to the filing of briefs *amicus curiae* on behalf of the Patrolmen's Benevolent Association and the Superior Officers Council. Both amici intended to file points urging reversal. At that time approximately ten days had elapsed since service of petitioner's brief. A week afterward, on December 30, 1965, the brief on behalf of the Benevolent Association was received and filed without opposition.

On January 4, 1966, respondent was informed that the brief of the second amicus was completed and would be filed with the Court. On that day, respondent received a copy of that brief together with a motion for leave to file the brief late. The brief of respondent is due no later than January 10, 1966. As of January 4, 1966, the brief was virtually completed; three of its four points had been submitted to the printer. The manuscript of the final point was being edited. The schedule allowed no major additions or revisions at this stage.

A cursory perusal of the Superior Officers' 20 pages of argument reveals that his points are substantially and materially different from those advanced by petitioner himself. Amicus relies upon authorities not asserted by petitioner, to support a theory altogether apart from the argument of petitioner. The injection of such new matter would require respondent, in the interest of a complete response, to alter portions of the brief already printed and to add new and additional points. In vital respects the arguments of amicus are fallacious, but the demonstration of fault, in this extremely complex area, necessitates long and painstaking exposition. To so amend our brief at this late date is physically impossible.

In consenting to the late filing of amicus briefs on a date when they were already late, respondent assumed that they would be consistent with petitioner's points and would be received in time to incorporate response to such arguments as might require particular refutation. The filing of a brief urging reversal, based on an entirely new legal point—albeit erroneous—on the eve of the due date of respondent's brief is unfair, highly prejudicial, and inconsistent with the prior understanding of the parties.

WHEREFORE, respondent is obliged to rescind the consent previously given and oppose the reception of the brief on behalf of the Superior Officers Council.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
New York County

H. RICHARD UVILLER
Assistant District Attorney
Of Counsel

January, 1966